

LARSON • KING

Shawn M. Raiter

Attorney at Law

Direct Dial: (651) 312-6518

Facsimile: (651) 789-4818

E-Mail: sraiter@larsonking.com

December 17, 2012

Via ECF

Magistrate Judge Steven E. Rau
United States District Court
334 Warren E. Burger Federal Courthouse
316 N. Robert Street
St. Paul, MN 55101

Re: *Puro, et al. v. New England Compounding Pharmacy, Inc.*
Court File No. 0:12-cv-02605 (DWF/SER)
Our File No. 1-963-0001

Dear Magistrate Judge Rau:

We represent the Plaintiff, Barbe Puro, in this matter and write in response to the December 17, 2012 letter from counsel for New England Compounding Pharmacy ("NECC"). (ECF 15). We oppose NECC's request to continue the Rule 16 conference in this matter and believe the Court should hold the conference as scheduled on January 9, 2013.

This is the first federal court action filed against NECC for injuries caused by contaminated steroids compounded and sold by NECC. The first petition filed with the Judicial Panel on Multidistrict Litigation ("JPML") seeks coordination and transfer of all actions to Minnesota. That petition was filed by parties and attorneys from Michigan. A number of other parties have subsequently supported Minnesota—Judge Frank in particular—for the future handling of all federal cases against NECC.

NECC asks the Court to postpone its Rule 16 conference to await a ruling that the JPML will likely make in February 2013. NECC simultaneously filed a motion to stay this case today, although NECC made and lost a motion to stay related litigation in Massachusetts. (*See* attached ECF 54 denying "all motions for stay in this case and each of the related cases."). Despite having this same argument rejected, NECC moved to stay all proceedings in this case until the JPML issues its decision. Judicial consistency and comity alone support a denial of NECC's request to continue the Rule 16 conference.

The mere filing of a JPML motion to transfer does not command a continuation of the Rule 16 conference. The JPML rules state that the filing of a motion to transfer does not mandate a stay of district court proceedings:

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The pendency of a motion, order to show cause, conditional transfer order or conditional remand order before the Panel concerning transfer or remand of an action pursuant to 28 U.S.C. § 1407 *does not affect or suspend orders in pretrial proceedings in the district court in which the action is pending and does not in any way limit the pretrial jurisdiction of that court.*

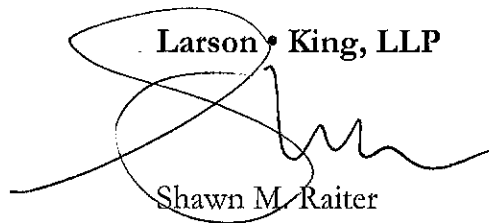
J.P.M.L. 2.1(d) (emphasis added). In light of this rule, district courts do not automatically stay discovery, postpone rulings, or generally suspend activity based on a JPML request for transfer and consolidation. MANUAL FOR COMPLEX LITIGATION (Fourth) § 20.131 (2004). Indeed, courts faced with requests to postpone scheduling and similar conferences in product liability litigation have rejected the same request NECC makes here. *See, e.g., In re Pradaxa Prod. Liab. Actions*, 2012 WL 2357425 *2 (S.D. Ill. June 20, 2012); *Jozwiak v. Stryker Corp.*, 2010 WL 147143 **2-3 (M.D. Fla. Jan. 11, 2010); *see also Guerrero v. Target Corp.*, 2012 WL 2054863 *1 (S.D. Fla. June 7, 2012); *Kramer v. NCS Pearson, Inc.*, 2003 WL 21640495 *2 (D. Minn. June 30, 2003).

The parties in this case have met and conducted their Rule 26(f) conference and will file their joint Rule 26(f) report by December 19, 2012, as required by the rules. Many of the other fungal meningitis cases are proceeding in different districts while the JPML considers the motions to transfer. This case should not be treated differently and should continue on its normal course unless and until the JPML orders coordination and transfer.

For the reasons stated herein, Ms. Puro requests that the Court hold the Rule 16 conference as scheduled on January 9, 2012. Thank you.

Very truly yours,

Larson • King, LLP

A handwritten signature in black ink, appearing to read "Shawn M. Raiter", is written over a circular stamp or seal.

Shawn M. Raiter

SMR:lcb

1355377

cc: All counsel of record (via ECF)

11/28/2012	<u>45</u>	WAIVER OF SERVICE Returned Executed by Michele Erkan. Glenn A. Chin waiver sent on 11/21/2012, answer due 1/21/2013. (Sobol, Thomas) (Entered: 11/28/2012)
11/28/2012	<u>46</u>	WAIVER OF SERVICE Returned Executed by Michele Erkan. Carla Conigliaro waiver sent on 11/21/2012, answer due 1/21/2013. (Sobol, Thomas) (Entered: 11/28/2012)
11/28/2012	<u>47</u>	WAIVER OF SERVICE Returned Executed by Michele Erkan. Douglas Conigliaro waiver sent on 11/21/2012, answer due 1/21/2013. (Sobol, Thomas) (Entered: 11/28/2012)
11/28/2012	<u>48</u>	WAIVER OF SERVICE Returned Executed by Michele Erkan. Lisa Conigliaro Cadden waiver sent on 11/21/2012, answer due 1/21/2013. (Sobol, Thomas) (Entered: 11/28/2012)
11/28/2012	<u>49</u>	WAIVER OF SERVICE Returned Executed by Michele Erkan. Gregory Conigliaro waiver sent on 11/21/2012, answer due 1/21/2013. (Sobol, Thomas) (Entered: 11/28/2012)
11/28/2012	<u>50</u>	WAIVER OF SERVICE Returned Executed by Michele Erkan. Barry Cadden waiver sent on 11/21/2012, answer due 1/21/2013. (Sobol, Thomas) (Entered: 11/28/2012)
11/28/2012	<u>51</u>	WAIVER OF SERVICE Returned Executed by Michele Erkan. Ameridose, LLC waiver sent on 11/21/2012, answer due 1/21/2013. (Sobol, Thomas) (Entered: 11/28/2012)
11/28/2012	<u>52</u>	WAIVER OF SERVICE Returned Executed by Michele Erkan. Medical Sales Management, Inc. waiver sent on 11/21/2012, answer due 1/21/2013. (Sobol, Thomas) (Entered: 11/28/2012)
11/28/2012	<u>53</u>	WRIT of Attachment issued. Associated Cases: 1:12-cv-12052-FDS, 1:12-cv-12066-FDS(Cicolini, Pietro) (Entered: 11/28/2012)
11/28/2012	<u>54</u>	ELECTRONIC Clerk's Notes for proceedings held before Judge F. Dennis Saylor, IV: Motion Hearing held on 11/28/2012. Case called. Court DENIES without prejudice Motion for Joinder (dkt #5 in case 12-cv-12112). Court DENIES all motions for stay filed in this case and each of the related cases. Order to issue re motions to consolidate. Order to issue reassigning Magistrate Judge Boal to case number 12-cv-12066. Filings/pleadings re Interim Preservation Order are due no later than 12:00 noon on December 4, 2012. Court will issue an order of referral to MJ Boal for the motion re Order to Inspect Premises. Order to issue re discovery conferences under Rule 26(f). Filings or applications re Interim Liaison Counsel are due December 5, 2012. A further status conference set for December 10, 2012, at 4:00 PM in Courtroom 2 before Judge F. Dennis Saylor IV. (Court Reporter: Valerie OHara at vaohara@gmail.com.)(Attorneys present: Sobol, Parker, Dougherty, Federico, Fleishman, Appel, Rapacki, Makalusky, Zamora (telephonic), Fern, Winchester, Moriarty, Tranen, Samson, Peirce, Nadel) Associated Cases: 1:12-cv-12052-FDS et al.(Cicolini, Pietro) (Entered: 11/29/2012)
11/29/2012	<u>55</u>	Judge F. Dennis Saylor, IV: ELECTRONIC ORDER entered re 1:12-cv-